Navarrette v. California, --- U.S. --- (2014)
Decided April 22, 2014

FACTS: On August 23, 2008, 911 dispatch for the California Highway Patrol (CHP) in Mendocino County, CA, received a call from the CHP dispatcher in adjacent Humboldt County. Humboldt County relayed a tip from a 911 caller, which was broadcast to CHP officers at 3:47 p.m., as follows:

> Showing southbound Highway 1 at mile marker 88, Silver Ford 150 pickup. Plate of 8-David- 94925. Ran the reporting party off the roadway and was last seen approximately five [minutes] ago.

At 4 p.m., a CHP officer heading northbound toward the area passed the truck; he made a U-turn and made the stop at 4:05 p.m. A second officer arrived on scene and the two officers approached the truck; they immediately smelled marijuana. A search of the truck revealed 40 pounds of marijuana. Navarette was driving; his passenger bore the same last name. Both were arrested.

Both moved to suppress the evidence, arguing that the traffic stop violated the Fourth Amendment as it lacked reasonable suspicion. The California trial courts disagreed and upheld the stop. Both Navarettes took a conditional guilty to transporting marijuana and appealed. The California Court of Appeal affirmed the plea; the California Supreme Court denied review. The Navarettes sought certiorari to the U.S. Supreme Court, which accepted review.

ISSUE: Might an anonymous 911 caller provide sufficient information to support a traffic stop?

HOLDING: Yes

DISCUSSION: The Court began by noting that the "Fourth Amendment permits brief investigative stops – such as the traffic stop in this case – when a law enforcement officer has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'"[1] Reasonable suspicion depends upon "both the content of information possessed by police and its degree of reliability."[2] Although a "mere hunch" is not enough, it requires "considerably less" than probable cause.[3]

With respect to anonymous tips, the Court noted that it had already rejected "the argument 'that reasonable cause for a[n investigative stop] can only be based on the officer's personal observation, rather than on information supplied by another person.'"[4] A true anonymous tip, standing alone, rarely provides any information as to the "Informant's basis of knowledge or veracity" because an ordinary caller does "not

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[1] U.S. v. Cortez, 449 U. S. 411 (1981); see also Terry v. Ohio, 392 U. S. 1 (1968). T
[2] Alabama v. White, 496 U. S. 325 (1990).
[3] U.S. v. Sokolow, 490 U. S. 1 (1989).
[4] Adams v. Williams, 407 U. S. 143 (1972).

provide extensive recitations of the basis of their every observations." But, under some circumstances, "an anonymous tip can demonstrate 'sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop."

The Court contrasted its holdings in Alabama v. White[5] and Florida v. J.L.[6] In the first, it had agreed that "the officers' corroboration of certain details made the anonymous tip sufficiently reliable to create reasonable suspicion of criminal activity." In the latter, however, the bare-bones tip, which essentially just placed a described suspect (allegedly with a gun) at a location, a bus stop, where people would, of course, be likely to stand. The tip provided no basis for the informant's knowledge of "concealed criminal behavior" – the gun – or any prediction of the suspect's future behavior that might be corroborated to "assess the tipster's credibility." In the latter, the Court concluded the tip was "insufficiently reliable."

In the current case, the first question is "whether the 911 call was sufficiently reliable to credit the allegation that" the Navarettes ran the caller off the road. Even "assuming for present purposes" that the call was truly anonymous, the Court found "adequate indicia of reliability" to support the stop.

> By reporting that she had been run off the road by a specific vehicle—a silver Ford F-150 pickup, license plate 8D94925—the caller necessarily claimed eyewitness knowledge of the alleged dangerous driving. That basis of knowledge lends significant support to the tip's reliability.[7]

Unlike cases where the tip concerns something hidden, like drugs or firearms, this claim involved personal and direct knowledge of the subject's wrongdoing. Further, the Court continued:

> There is also reason to think that the 911 caller in this case was telling the truth. Police confirmed the truck's location near mile marker 69 (roughly 19 highway miles south of the location reported in the 911 call) at 4:00 p.m. (roughly 18 minutes after the 911 call). That timeline of events suggests that the caller reported the incident soon after she was run off the road. That sort of contemporaneous report has long been treated as especially reliable. In evidence law, we generally credit the proposition that statements about an event and made soon after perceiving that event are especially trustworthy because "substantial contemporaneity of event and statement negate the likelihood of deliberate or conscious misrepresentation." A similar rationale applies to a "statement relating to a startling event"—such as getting run off the road—"made while the declarant was under the stress of excitement that it caused." Unsurprisingly, 911 calls that would otherwise be inadmissible hearsay have often been admitted on those grounds. There was no indication that the tip in J.

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[5] Supra.
[6] 529 U. S. 266 (2000)
[7] Illinois v. Gates, 462 U. S. 213 (1983)); Spinnelli v. U.S., 393 U. S. 410 (1969).

> L. (or even in White) was contemporaneous with the observation of criminal activity or made under the stress of excitement caused by a startling event, but those considerations weigh in favor of the caller's veracity here.[8]

In addition, the caller used the 911 system, and most, if not all, such emergency systems include "some features that allow for identifying and tracking callers, and thus provide some safeguards against making false reports with immunity." They "can be recorded, which allows victims with an opportunity to identify the false tipster's voice and subject him to prosecution." Federal FCC mandates require cell phones to relay the phone number to 911 and most now identify the caller's "geographic location with increasing specificity." Although not perfect, it would be reasonable for an officer to "conclude that a false tipster would think twice before using such a system." The use of 911 was one of the relevant circumstances that supported the reliance of the officers.

The Court agreed, however, that "even a reliable tip will justify an investigative stop only if it creates reasonable suspicion that 'criminal activity may be afoot.'" The Court agreed that the reported behavior supported a reasonable suspicion of impaired/drunk driving. A number of cases supported the idea that "the accumulated experience of thousands of officers suggest that these sorts of erratic behaviors are strongly correlated with drunk driving." Not all traffic infractions do, of course, such as minor speeding or failure to use a seatbelt, but "a reliable tip alleging the dangerous behaviors" reported in this case, certainly do. "Running another vehicle off the road suggests lane-positioning problems, decreased vigilance, impaired judgment, or some combination of those recognized drunk driving cues.[9] Further, "the experience of many officers suggests that a driver who almost strikes a vehicle or another object – the exact scenario that ordinary causes 'running off the roadway' is likely intoxicated." Although it is certainly true that it might have been caused by a momentary distraction, a finding of reasonable suspicion does not have to "rule out the possibility of innocent conduct."[10]

Finally:

> Nor did the absence of additional suspicious conduct, after the vehicle was first spotted by an officer, dispel the reasonable suspicion of drunk driving. . It is hardly surprising that the appearance of a marked police car would inspire more careful driving for a time. Extended observation of an allegedly drunk driver might eventually dispel a reasonable suspicion of intoxication, but the 5-minute period in this case hardly sufficed in that regard. Of course, an officer who already has such a reasonable suspicion need not surveil a vehicle at length in order to personally observe suspicious driving. Once reasonable suspicion of drunk driving arises, "[t]he reasonableness of the officer's decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques.". This would be a particularly inappropriate context to depart from that settled rule, because allowing a drunk driver a second chance for dangerous conduct could

[8] Internal citations removed for brevity.
[9] The Court cited to several training manuals and documents for law enforcement.
[10] U.S. v. Arvizu, 534 U.S. 266 (2002)

have disastrous consequences.

The Court acknowledged this situation was a “close call,” but agreed that “under the totality of the circumstances,” the “indicia of reliability” was enough to find reasonable suspicion to justify the investigative stop.

The Supreme Court upheld California’s ruling.

FULL TEXT OF OPINION: **http://www.supremecourt.gov/opinions/13pdf/12-9490_3fb4.pdf**